IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4811 OF 2005

Deepak Joma Patil,
Prop. of M/s.Patil Enterprises
& Others ..Petitioners.

Vs.

The Executive Engineer,
Administration,
Public Health Engineering Department,
Navi Mumbai Municipal Corporation
& Others ..Respondents.

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Mr.Rahul Thakur with Mr.Pravin Desai with
Mr.Milind Parab for the Petitioners.
Mr.R.S.Apte with Mr.A.A.Garge for Respondent Nos.1 to 3.
Mrs.S.S.Bhende, AGP for Respondent No.4.

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CORAM : F.I.REBELLO &
DR.D.Y.CHANDRACHUD, JJ.
11th October, 2005.

P.C. :

1. Rule. Heard forthwith.

2. It is the case of the Petitioners that Respondents pursuant to the advertisement invited tenders for providing labour contract. Tenders prescribed that the contract was for five years. About 81 contracts were awarded, out of which 78 have approached this Court on the ground that contracts have been terminated after one year. It is their contention that there was legitimate expectation that the contract would be continued for a period of four years even though it was open to the Respondents to consider renewal after the first period of five years. No show cause notice was issued to the Petitioners nor have they been informed of any breach on their part in so far as performing the contract.

3. On behalf of Respondent Nos.1 to 3 an affidavit has been filed by Mr. Surendra Patil, who is Respondent No.1. It is the case of the said Respondents that in the contract executed with the contractors, it was mentioned that the Municipal

Corporation can discontinue the contract through a prior 15 days communication in that behalf. It is on this basis that the work orders were issued to the persons whose bids were accepted. In the work orders also it was set out that though the gross period of the contract was five years, the same is extendable on year to year basis. It is pointed out that the proposal for renewing the contract for a further one year from 1st June, 2005 to 31st May, 2006 was before the standing committee. The members of the standing committee complained regarding the functioning of the contractors and ultimately the committee resolved that the contract expiring on 31st May, 2005, be extended for three months ending on 31st August, 2005. As the work of the present contractors is not satisfactory, fresh tenders were invited.

It is thus clear that the decision not to renew the contract for a further period was due to the decision taken by the standing committee. The minutes of the standing committee have been placed before us. We do not find any material which was considered in respect of each of the contractors who are the Petitioners herein except that there

was generally a complaint about the performance of the contractors. Clause 11.2 of the contract partly reads as under :

> "The Corporation and Operator shall review, at the end of each Operating Year, the progress of the Contract and consider continuation through the subsequent Operating Year."

We may gainfully refer to Clause 11.3 which reads as under :

> "11.3 Contract Continuation : The Corporation along with the Competent Authority shall review the progress and status of the Contract, thirty (3) days prior to completion of an Operating year. In the event that a decision is taken to discontinue Operations of the Operator under this Contract, the Corporation shall indicate the same to the Operator, through a written communication, within fifteen (15) days of such decisions having been made.

> Alternatively if the Operator wishes to discontinue, it shall provide a minimum of ninety (90) days notice requesting for such discontinuation."

A reading of the said clauses would indicate that there must be a review of the work done and based on the review a decision has to be taken. In other words, there must be material in the event the Corporation proposes not to renew the contract, in such matters it need not be gainsaid that the contractor should be made known the deficiency. In the instance case, we find that what has been set out in Clauses 11.2 and 11.3 has not been followed and consequently, the decision to terminate the contract has to be set aside.

4. We, however, make it clear that it would be open to the Respondents after following the procedure set out in clauses 11.2 and 11.3 which include giving the contractor an opportunity, of taking such steps in law based on the circumstances and the material available before it. The decision to be taken by the appropriate authority of the Corporation within three months from today. In the

meantime, so as not to cause inconvenience to the citizens and to see that the municipal area is hygienically maintained, the contract of the Petitioners be continued till such time.

Another grievance of the Petitioners is that they are not being paid for the period after the Petition was filed. If that be their case, we direct the Corporation if any amounts are not being paid, to pay at the rates as set out in terms of the contract.

Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)